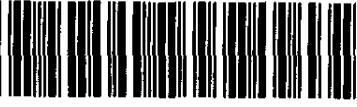
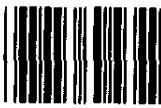


USDC SCAN INDEX SHEET



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3:00-CV-00305 SEC V. NEWMARK
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CMP.

ORIGINAL

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5 Securities and Exchange Commission
5 Valerie Caproni, Regional Director
5 5670 Wilshire Boulevard, 11th Floor
6 Los Angeles, California 90036-3648
6 Phone: (323) 965-3998
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00 FEB 11 AM 11:09
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sandra DEPUTY

8
9
10 UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 11 SECURITIES AND EXCHANGE COMMISSION,

13 Plaintiff,
13 vs.

14 ANDREW JAY NEWMARK,
15 Defendant.

100 CV Case No.

305 JM

(JFS)

16 COMPLAINT FOR INSIDER TRADING
17 IN VIOLATION OF THE FEDERAL
18 SECURITIES LAWS

19 Plaintiff Securities and Exchange Commission ("Commission")
20 alleges:

JURISDICTION AND VENUE

21 1. This Court has jurisdiction over this action pursuant to
22 Sections 21(d), 21(e), 21A(a)(1) and 27 of the Securities Exchange
23 Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e),
24 78u-1(a)(1) and 78aa].

25 2. Defendant Andrew Jay Newmark ("Newmark" or "Defendant"),
26 directly or indirectly, made use of the means or instrumentalities
27 of interstate commerce, of the mails, and/or the facilities of a
28 national securities exchange, in connection with the transactions,

AK

1 //acts, practices and courses of business alleged in this Complaint.

2 3. This Court is an appropriate venue for this action
3 pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].
4 Certain of the transactions, acts, practices and courses of business
5 constituting violations of the laws alleged herein occurred within
6 the Southern District of California.

SUMMARY

8 4. This matter involves insider trading in the securities of
9 DH Technology, Inc. ("DH Technology") by Defendant Andrew Jay
10 Newmark. After Axiohm, S.A. ("Axiohm") had taken a substantial
11 step or steps to commence a tender offer for DH Technology, Newmark
12 acquired material information about the Axiohm proposal that he knew
13 or had reason to know was non-public and had been acquired directly
14 from DH Technology's Chief Executive Officer, William Gibbs
15 ("Gibbs").

16 5. In late 1996, Newmark introduced DH Technology to Axiohm
17 for the purpose of their discussing a possible merger. On April 3,
18 1997, Newmark learned from Gibbs that the merger discussions had
19 advanced to the point that the companies had discussed a possible
20 price at which Axiohm would acquire DH Technology.

21 6. Between April 3 and 11, 1997, Newmark bought 30,000 DH
22 Technology shares for \$513,125. On July 15, 1997, DH Technology
23 announced that Axiohm would acquire it via a tender offer. Newmark
24 sold his DH Technology shares on July 16 and 17, 1997, realizing
25 profits of \$173,895.38.

THE DEFENDANT

27 7. Andrew Jay Newmark, age 41, resides in Greenwich,
28 Connecticut. Since 1989, Newmark has been Chairman of CoStar

1 Corporation, a manufacturer of label printers and a pre-merger
2 client of both DH Technology and Axiohm.

3 **RELATED ENTITIES AND PERSON**

4 8. DH Technology, Inc., prior to its merger with Axiohm, was
5 a California corporation with its principal place of business in San
6 Diego. It designed, manufactured, and distributed credit card
7 receipt and bar code printers. Its stock was registered with the
8 Commission pursuant to Section 12(g) of the Exchange Act and was
9 traded on Nasdaq.

10 9. Axiohm, S.A., prior to its merger with DH Technology, was
11 a privately-held French company with its headquarters in Montrouge,
12 France. After the merger and a series of exchanges with two of its
13 subsidiaries and its holding company, the company registered as a
14 California corporation, Axiohm Transaction Solutions, Inc. It
15 designs, manufactures, and distributes credit card receipt printers,
16 including printers that appear at pay-at-the-pump gasoline stations.
17 It is traded on Nasdaq.

18 10. William Gibbs, age 55, was the Chairman, CEO and President
19 of DH Technology until January 1998.

20 **SUBSTANTIAL STEP OR STEPS**

21 11. On October 25, 1996, Newmark met with Axiohm's Co-
22 President and presented his idea for an Axiohm-DH Technology merger.
23 On November 14, 1996, Newmark met with Gibbs and made a similar
24 presentation. Gibbs asked Newmark to obtain financial information
25 concerning Axiohm, set up a meeting between the companies and
26 arrange a tour of DH Technology's facilities for Axiohm's officers.
27 Gibbs preserved the confidentiality of the tours, even from DH
28 Technology's own employees, by creating cover stories for the

1 visits. The tours took place on December 12 and 13, 1996. On April
 2 2, 1997, DH Technology and Axiohm officers met and, for the first
 3 time, discussed a range of prices in the mid-\$20s per share at which
 4 Axiohm would be willing to acquire DH Technology.

5 **NEWMARK'S KNOWLEDGE**

6 12. On April 3, 1997, Gibbs told Newmark that the merger
 7 discussions with Axiohm were continuing and that Axiohm had
 8 discussed a range of prices in the mid-\$20s per share at which it
 9 would be willing to acquire DH Technology. At the time, DH
 10 Technology's stock was trading at approximately \$17 per share.
 11 Newmark responded with a letter to Gibbs, stating in part: "I'm glad
 12 things are moving along with Axiohm. The combination will be a
 13 powerhouse."

14 13. Newmark knew, or had reason to know, that the information
 15 regarding Axiohm's proposal to acquire DH Technology was non-public
 16 and was acquired directly from an officer of DH Technology.

17 **NEWMARK'S PURCHASES OF DH TECHNOLOGY STOCK**

18 14. While in possession of this material, non-public
 19 information, Newmark engaged in the following transactions: On
 20 April 3, 1997 Newmark purchased 13,000 shares of DH Technology at
 21 \$17 per share, for a total purchase price of \$221,000. The next
 22 day, Newmark purchased an additional 10,000 shares at \$17.3125 per
 23 share, for a total purchase price of \$173,125. On April 7, 1997,
 24 Newmark purchased 2,000 additional shares at \$17 per share, for a
 25 total purchase price of \$34,000. Finally, on April 11, 1997,
 26 Newmark purchased an additional 5,000 shares at \$17 per share, for a
 27 total purchase price of \$85,000.

PUBLIC ANNOUNCEMENT OF AXIOHM'S TENDER OFFER

2 15. On July 15, 1997, DH Technology publicly announced that it
3 had signed a definitive merger agreement with Axiohm. The agreement
4 provided that a wholly-owned subsidiary of Axiohm would commence a
5 cash tender offer no later than July 21, 1997 to acquire between
6 6,500,000 and 7,000,000 shares of DH Technology at \$25 per share.

7 16. Following the public announcement of the tender offer, DH
8 Technology's stock rose from a closing bid of \$15.875 on July 14 to
9 a closing bid of \$23 on July 15, an increase of nearly 45%, on
10 volume of 887,000 shares. The volume was 60 times the 13,000
11 average daily volume for DH Technology stock measured during the
12 three week period prior to the public announcement.

NEWMARK'S SALE OF DH TECHNOLOGY STOCK

14 17. On July 16, 1997, one day after the public announcement of
15 the Axiohm tender offer, Newmark sold 10,000 shares of DH Technology
16 at \$22.875 per share, for a total sale price of \$228,750. The next
17 day, Newmark sold the rest of his DH Technology shares in four lots:
18 13,000 shares at \$23 per share, 3,000 shares at \$23.25 per share,
19 2,000 shares at \$23.0625 per share, and 2,000 shares at \$23.25 per
20 share. Newmark realized \$173,895.38 in profits from these sales of
21 DH Technology stock.

FIRST CLAIM

Violations of Section 14(e) of the Securities

Exchange Act of 1934 [15 U.S.C. § 78n(e)]

and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder.

26 18. Paragraphs 1 through 17 are realleged and incorporated
27 herein by reference.

1 19. By April 2, 1997, Axiohm had taken substantial steps
2 towards commencing its tender offer for the securities of DH
3 Technology, including among other things, holding several
4 confidential meetings and discussions with representatives of DH
5 Technology, exchanging financial information for the purpose of
6 facilitating such meetings and discussions, and ascertaining an
7 approximate price at which it was prepared to acquire DH Technology.

8 20. Newmark purchased DH Technology stock, as described above,
9 while he possessed material non-public information relating to a
10 tender offer or request or invitation for a tender offer for DH
11 Technology stock. At the time that he purchased the DH Technology
12 stock, Newmark knew or had reason to know that the information he
13 possessed concerning the DH Technology stock was non-public and had
14 been acquired directly or indirectly from DH Technology, which was
15 the issuer of the securities to be sought by the offering person,
16 Axiohm.

17 21. The material, non-public information relating to the tender
18 offer for DH Technology stock was not publicly disclosed by press
19 release or otherwise within a reasonable time prior to the Newmark's
20 purchase.

21 22. By reason of the foregoing acts, practices, and course-of-
22 business, Newmark violated Section 14(e) of the Exchange Act [15
23 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated
24 thereunder.

PRAYER FOR RELIEF

26 WHEREFORE, the Commission respectfully requests that this
27 Court:

I

3 Issue findings of fact and conclusions of law that the
4 Defendant committed the violations charged and alleged herein.

II.

6 Permanently enjoin Newmark from violating Section 14(e) of the
7 Exchange Act and Rule 14e-3 thereunder.

III.

9 Order Newmark to disgorge all improper gains from his unlawful
10 conduct, gained directly or indirectly from the transactions
11 complained of herein, together with prejudgment interest thereon.

IV.

13 Order Newmark to pay a civil money penalty pursuant to Section
14 21A of the Exchange Act [15 U.S.C. § 78u-1].

v.

16 Retain jurisdiction of this action in accordance with the
17 principles of equity and the Federal Rules of Civil Procedure in
18 order to implement and carry out the terms of all orders and decrees
19 that may be entered or to entertain any suitable application or
20 motion for additional relief within the jurisdiction of this Court.

VI.

22 Grant such other and further relief as this Court may determine
23 to be just and necessary.

DATED: FEBRUARY 11, 2000

Todd Brilliant

CIVIL COVER SHEET

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

ANDREW JAY NEWMARK

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT, CALIFORNIA

00 FEB 11 AM 11:09

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Todd Brilliant
Securities and Exchange Commission
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-3648
(323) 965-3998

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Connecticut
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, INDICATE THE LOCATION OF THE DEPUTY
TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN) NO CV 305 JM (JFS)
David E. Nachman, Esq.
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111
(212) 424-0789

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicates Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF DEF	PTF DEF
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE, JURISDICTIONAL STATUTES UNLESS DIVERSITY)

15 U.S.C. Section 78n(e) and Rule 17 C.F.R. 240.14e-3. Andrew Jay Newmark engaged in fraudulent, deceptive, or manipulative acts or practices in connection with a tender offer.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 400 Suite Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 428 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employer Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Ex. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 863 DMR/DRWV (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS		<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(l))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 520 Habeas Corpus:	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Other		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: YES NOVIII. RELATED CASE(S) (See instructions)
IF ANY

N/A

JUDGE

DOCKET NUMBER

DATE

February 11, 2000

SIGNATURE OF ATTORNEY OF RECORD

Todd Brilliant

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney or record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.